



DE P&T

Atty. Dkt. No. 063993-0108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yasushi IIDA et al.
Title: PRESSURE VESSEL AND
PROCESS FOR PRODUCING
THE SAME
Appl. No.: 09/711,138
Filing Date: 11/14/2000
Examiner: Stephen J. Castellano
Art Unit: 3727

#21 / Reg for
Refund
07-14-04**REQUEST FOR REFUND UNDER 37 CFR 1.26**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby request a refund under 37 CFR 1.26 of \$770.00 for Request for Continued Examination fee that was paid on February 4, 2004 in Application No. 09/711,138. Under 37 CFR 1.26(a), "[t]he Commissioner may refund any fee paid by mistake or in excess of that required." Applicants urge for the following reasons that the \$770 paid in a Request for Continued Examination was in excess of the fees required to prosecute the captioned application, or in the alternative, a fee paid by mistake.

On September 5, 2003, the USPTO mailed a final Office Action. Applicants then filed a Response and a Notice of Appeal on December 4, 2003 and received an Advisory Action on January 21, 2004. In turn applicants filed a Request for Continued Examination (RCE) and Petition for Extension of Time, along with the requisite fees, on February 4, 2004. In an Office Communication issued April 19, 2004, the Examiner held that the RCE was non-responsive because the amended claims of the RCE were to a non-elected species. Although applicants did not agree with the Examiner's decision, on May 19, 2004 applicants filed a

Continuation application under Rule 53(b) to expedite prosecution. The Continuation was filed with a \$770 filing fee. 2004 JUN 15 11 31 34

Thus in effect, the PTO has received two examination fees for one examination. Because only one examination fee is required to initiate a new round of examination, applicants contend that the PTO has received under 37 CFR 1.26 a fee "in excess of that required." In the alternative, applicants urge that an RCE, in lieu of a Rule 53(b) Continuation was filed by mistake, and therefore the fee is refundable under 37 CFR 1.26.

Under 37 CFR 1.26(b), applicants have up to two years from the date a fee was paid to request a refund. Because the fee for an RCE was filed on February 2, 2004, this Request is timely.


In view of the foregoing, the PTO is respectfully requested to refund \$770 to Deposit Account No. 19-0741. It is believed that no fee is required for filing this petition, but should a fee be required, the PTO is authorized to charge an appropriate fee for the filing of this petition to Deposit Account No. 19-0741.

Respectfully submitted,

Date

June 8, 2004

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5446
Facsimile: (202) 672-5399


Matthew E. Mulkeen
Attorney for Applicants
Registration No. 44,250